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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,025	12/11/2003	Houston Jagers	12152/003	2359

7590

04/14/2004

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EXAMINER
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PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 04/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Office Action Summary</b></p>	<b>Application No.</b> 10/734,025	<b>Applicant(s)</b> JAGGERS, HOUSTON	
	<b>Examiner</b> David J Parsley	<b>Art Unit</b> 3643	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12-11-03</u> .  | 6) <input type="checkbox"/> Other: ____.                                    |

## **Detailed Action**

### ***Specification***

1. The disclosure is objected to because of the following informalities: the term “shoot” appears numerous times in the specification, for example at page 4 line 8 and should be - - chute- -. Appropriate correction is required.

Claims 5 and 12 are objected to because of the following informalities: “shoot” in line 1 of claim 5 and line 1 of claim 12 should be - -chute- -. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 5 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A natural phenomenon being the “angler’s hand” is claimed as part of the claimed apparatus.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8-10 and 12-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,834,062 to Nalepka or U.S. Patent No. 5,799,435 to Stafford.

Referring to claims 1-2, 8 and 13-17, Nalepka and Stafford disclose a minnow bucket comprising, a bucket base/means for holding a plurality of minnows – at 12 of Nalepka and – at 11-12 of Stafford, an automatic dispensing device/means for automatically dispensing solely one minnow from the means of holding the plurality of minnows – see figures 5-6 of Nalepka and – at 38-39 or 44 of Stafford, positioned inside the bucket base – see figure 1 of Nalepka and figure 1 of Stafford, and a lid/means for covering the means for holding the plurality of minnows – at 14 of Nalepka and – at 41 of Stafford. Nalepka and Stafford further disclose the automatic dispensing device comprising a minnow tray – at 22,24 of Nalepka and – at 36-40 of Stafford, connected with a minnow tray handle – at 58 of Nalepka and – at 43 of Stafford. Further, the limitation of raising the dispensing device on a vertical axis in relation to the bucket base dispensing at least one minnow is functional language which uses method limitations to describe the operation of the claimed apparatus and adds no structural limitations of the claims and therefore these limitations have not been considered, see *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959) and MPEP section 2114.

Referring to claim 3, Nalepka and Stafford disclose the minnow tray is formed having a concave shape – see figures 5-6 of Nalepka and figures 1-2 of Stafford, with a minnow tray opening – see figures 5-6 of Nalepka and – proximate 44 of Stafford.

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Referring to claim 4, Nalepka and Stafford disclose the minnow tray includes a plurality of apertures – see figure 1 and figures 5-6 of Nalepka and – at 38-39 of Stafford, that allows water to pass through the minnow tray and back into the bucket base.

Referring to claims 5 and 12, Nalepka and Stafford disclose a dispenser chute – at 34-44 of Nalepka and – at 17 or 19 or proximate 18 or 20 of Stafford. Further, the limitation of the dispenser shoot allowing the minnow to travel in a downward direction from the automatic dispensing device to an angler's hand constitutes functional language which uses method limitations to describe the operation of the claimed apparatus and adds no structural limitations of the claims and therefore these limitations have not been considered, see *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959) and MPEP section 2114.

Referring to claims 6 and 9, Nalepka and Stafford disclose at least one guide rail – at 20 of Nalepka and – at 26 of Stafford, that guides the automatic dispensing device.

Referring to claim 10, Nalepka and Stafford disclose the lid includes a minnow return – see proximate 16 of Nalepka and – proximate 44-45 of Stafford.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 7, 11 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nalepka or Stafford as applied to claims 1, 8 and 13 above, and further in view of U.S. Patent No. 5,802,760 to Campbell.

Referring to claims 7 and 11, Nalepka and Stafford do not disclose an air pump connected to the lid. Campbell does disclose an air pump – at 29 connected to the lid – at 25. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Nalepka or Stafford and add the pump of Campbell, so as to maintain the minnows for longer periods of time inside the bucket.

Referring to claims 18-19, Nalepka and Stafford do not disclose a means for aerating the means for holding a plurality of minnows and the means for aerating an air pump and air diffuser. Campbell does disclose a means for aerating comprising a pump – at 29 and air diffuser – at 37 – see figure 2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Nalepka or Stafford and add the pump of Campbell, so as to maintain the minnows for longer periods of time inside the bucket.

### *Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to minnow buckets in general:

U.S. Pat. No.1,385,792 to Petty – shows minnow bucket

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U.S. Pat. No. 1,986,742 to Mosher – shows minnow bucket

U.S. Pat. No. 2,330,870 to Collier – shows minnow bucket

U.S. Pat. No. 2,498,795 to Davis – shows dispensing device

U.S. Pat. No. 2,531,628 to Janisch – shows minnow bucket

U.S. Pat. No. 2,663,115 to McKissack – shows minnow bucket

U.S. Pat. No. 2,767,509 to Breithaupt – shows minnow bucket

U.S. Pat. No. 2,767,510 to Hopkins – shows minnow bucket

U.S. Pat. No. 2,963,814 to Zabrocki – shows minnow bucket

U.S. Pat. No. 2,966,758 to Riedel – shows minnow bucket

U.S. Pat. No. 3,000,132 to Koistinen – shows minnow bucket

U.S. Pat. No. 3,002,312 to Barker – shows minnow bucket

U.S. Pat. No. 3,212,210 to Schmelzer – shows minnow bucket

U.S. Pat. No. 3,726,039 to Borrelli – shows minnow bucket

U.S. Pat. No. 3,831,310 to Frangullie – shows minnow bucket

U.S. Pat. No. 3,955,306 to Handa – shows minnow bucket

U.S. Pat. No. 4,030,227 to Oftedahl – shows minnow bucket

U.S. Pat. No. 4,759,148 to Love – shows minnow bucket

U.S. Pat. No. 4,763,438 to Saliaris – shows minnow bucket

U.S. Pat. No. 4,787,169 to Maxfield – shows minnow bucket

U.S. Pat. No. 5,109,625 to Skrede – shows minnow bucket

U.S. Pat. No. 5,319,877 to Hagan – shows minnow bucket

U.S. Pat. No. 6,357,169 to Gouge – shows minnow bucket

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JP Pat. No. 5-56735 – shows minnow bucket

6. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.

A handwritten signature in black ink, appearing to read "Peter M. Poon". The signature is stylized with a large initial "P" and a long horizontal stroke at the end.

Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600